

## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF PENNSYLVANIA

THE MIDDLE EAST FORUM,	:	Case No. 2:19-cv-05697-JS
	:	
Plaintiff,	:	
v.	:	Philadelphia, Pennsylvania
	:	December 20, 2022
LISA REYNOLDS-BARBOUNIS,	:	2:10 p.m.
	:	
Defendant.	:	
. . . . .	:	

TRANSCRIPT OF MOTION FOR SANCTIONS HEARING  
BEFORE THE HONORABLE JUAN R. SANCHEZ  
UNITED STATES DISTRICT COURT CHIEF JUDGE

## APPEARANCES:

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1 (Call to Order of the Court)

2 THE DEPUTY CLERK: All, rise. This Court's now in  
3 session. The Honorable Chief Judge, Juan R. Sanchez,  
4 presiding.

5 THE COURT: Good afternoon, everyone.

6 ATTISON BARNES: Good afternoon, Your Honor.

7 SIDNEY GOLD: Afternoon, Your Honor.

8 CATHERINE SMITH: Afternoon, Your Honor.

9 THE COURT: You may be seated. So we have  
10 Middle East Forum, Attison Barnes, Sidney Gold. I think we  
11 have another Lawyer, Jonathan Cavalier. And we have  
12 Attorney Catherine Smith, representing Attorney Seth Carson.

13 MS. SMITH: Correct, Your Honor.

14 THE COURT: And we have Attorney Carson.

15 SETH CARSON: Good afternoon, Your Honor.

16 THE COURT: I scheduled this Motion for Contempt,  
17 because I think it was outstanding. But I tried the case to  
18 the jury. You got a verdict. I think you appealed the verdict  
19 and here we are. Are you ready to proceed to present your  
20 case?

21 JONATHAN CAVALIER: We are.

22 THE COURT: Okay. And Attorney Carson, you're  
23 ready?

24 MR. CARSON: Yes, Your Honor. Yes, Your Honor.

25 THE COURT: Okay. Well, give me a brief opening.

1 Tell me.

2 MR. CAVALIER: Certainly, Your Honor. As  
3 Your Honor -

4 THE COURT: Come forward. Come forward.

5 MR. CAVALIER: As -

6 THE COURT: So -

7 MR. CAVALIER: - Your Honor mentioned and is surely  
8 fully aware, this matter's been extensively briefed already.  
9 We've had -

10 THE COURT: Right; so you -- maybe if you answer my  
11 questions, I don't know whether you want to -

12 MR. CAVALIER: Sure.

13 THE COURT: - develop the record, or you want to  
14 rely on the record we have.

15 MR. CAVALIER: As a matter of fact, Your Honor, I  
16 was going to ask what the Court wanted us to present today.

17 THE COURT: Yeah.

18 MR. CAVALIER: We don't want to go over the record  
19 that's already been presented, waste -

20 THE COURT: Yeah.

21 MR. CAVALIER: - the Court's time.

22 THE COURT: So if you're okay, I think that we have  
23 -- if everybody's standing by the record we have, I'm okay with  
24 that. And you could answer many questions that I have with  
25 regards to your case for contempt.

1 MR. CAVALIER: Certainly.

2 THE COURT: But if you have anything else to offer,  
3 I'll be happy to listen to whatever you have to offer.

4 MR. CAVALIER: I think it might depend on the  
5 questions Your Honor asks. But the record certainly contains  
6 evidence of the sanction -- the conduct that resulted in the  
7 Sanctions Motion, the attorneys' fees that were actually  
8 billed.

9 THE COURT: Right.

10 MR. CAVALIER: Actually paid by the Client; I think  
11 Your Honor took two rounds of briefing and held two hearings on  
12 this, already -

13 THE COURT: Right.

14 MR. CAVALIER: - where Mr. Roman and Mr. Barnes have  
15 already -

16 THE COURT: Yeah.

17 MR. CAVALIER: - testified.

18 THE COURT: Two rounds of hearing; yeah, I had two  
19 rounds of hearing -

20 MR. CAVALIER: Yes.

21 THE COURT: - by your request.

22 MR. CAVALIER: I think that's right, Your Honor.

23 THE COURT: All right. Oh, so, I think the record  
24 is clear. You'd stipulate to the record?

25 MR. CARSON: I will, Your Honor.

1 THE COURT: All right. So, tell me. How did one  
2 single misfiled document leads to \$65,000 in attorney fees? I  
3 want to know your calculations. What was the hourly rate you  
4 charged EMF? And why, why am I going to impose almost a half a  
5 million dollars in sanction that you're requesting in terms of  
6 basically you want me to undo the jury verdict?

7 MR. CAVALIER: So, Your Honor, as far as there was a  
8 request at some point in time for half a million dollars, we're  
9 not pursuing that.

10 THE COURT: So you're abandoning that, because -

11 MR. CAVALIER: We are -

12 THE COURT: - that's ridiculous -

13 MR. CAVALIER: - certainly -

14 THE COURT: - right?

15 MR. CAVALIER: - not -

16 THE COURT: You will agree to me that's ridiculous?

17 MR. CAVALIER: I'd have to look into -

18 THE COURT: Whoever requested -

19 MR. CAVALIER: - why it was presented.

20 THE COURT: - that -

21 MR. CAVALIER: But -

22 THE COURT: Whoever requested that in the pleadings  
23 some time ago was a ridiculous request, because jury basically  
24 told you go pound sand. You're not entitled to a half a  
25 million dollar verdict.

1 MR. CAVALIER: I wasn't Trial Counsel, but I -

2 THE COURT: All right.

3 MR. CAVALIER: - am aware of that. And certainly,  
4 Your Honor, to the extent it's still pending, we withdraw it.

5 THE COURT: Tell me what was the actual harm, if  
6 any, if any? Can you prove to me the actual harm by the  
7 misfiled document, because, as I understand it correctly from  
8 the record, the document was pretty much -- the Report was on  
9 the net for approximately less than eight hours and there was  
10 efforts to remove it from the two Providers --  
11 Third-Party Providers that did not remove it until November 5th  
12 of 2021? So it's a very short period of time -

13 MR. CAVALIER: So -

14 THE COURT: - that the Report was accessible by  
15 anyone. But my question to you, because you, at trial, could  
16 not prove any actual damage.

17 And you rely on this -- in my view -- sketchy theory  
18 of damages and restitution. You don't have today any damages'  
19 calculations -- actual damage calculations, as a result of the  
20 disclosure, right?

21 MR. CAVALIER: So, Your Honor, I would submit to you  
22 that the harm was the work required by the Attorneys in this  
23 case to remedy the contempt -

24 THE COURT: All right. So what?

25 MR. CAVALIER: - to prevent that harm.

1 THE COURT: So what was -- you filed a whole bunch  
2 of Motions. You duplicated the efforts here of litigation.  
3 It's your doing. You're the one that's coming into court  
4 multiple times claiming multiple violations. So -

5 MR. CAVALIER: Your Honor -

6 THE COURT: - what?

7 MR. CAVALIER: - I think that was -

8 THE COURT: And you're charging for that \$65,000?

9 MR. CAVALIER: I think that was necessitated by the  
10 inability to gain Mr. Carson's compliance with the Protective  
11 Order and with the Order that Your Honor issued after the first  
12 hearing.

13 If you recall, during the discussion on these issues,  
14 we got a bunch of differing defenses from Mr. Carson. First,  
15 it was -

16 THE COURT: I'm not -

17 MR. CAVALIER: - he -

18 THE COURT: - going to relitigate the case that was  
19 relitigated before the trial, before you were trying to have me  
20 admit that evidence in your case in chief. And I did not. I  
21 did not admit it in your case in chief.

22 But, really, do you want for these two pleadings that  
23 you filed, \$65,000? How do you reach those calculations?

24 MR. CAVALIER: So -

25 THE COURT: Tell me.



1 MR. CAVALIER: - Your Honor, let me say two things.  
2 We provided the Court with the actual amount of fees that were  
3 billed and paid by the Client. What we're asking the Court to  
4 reward is whatever it finds to be a reasonable fee.

5 THE COURT: Yeah. Well, seems to me you were trying  
6 to shoot a mosquito with a bazooka. So, the other question I  
7 have is, so you don't have any actual damages, as a result of  
8 the disclosure, right?

9 MR. CAVALIER: I think -

10 THE COURT: You don't.

11 MR. CAVALIER: - we would state it as we prevented  
12 any actual damages through our own efforts.

13 THE COURT: What are the actual damages that you  
14 prevented from the disclosure? Tell me.

15 MR. CAVALIER: Disclosure of the Report, the -

16 THE COURT: But -

17 MR. CAVALIER: - fact that anybody out in the public  
18 could have obtained the Report, used it against our -

19 THE COURT: - nobody -

20 MR. CAVALIER: - Client.

21 THE COURT: - did. Nobody did, right?

22 MR. CAVALIER: I -

23 THE COURT: You can't prove that.

24 MR. CAVALIER: No, Your Honor. We agree no one did.

25 We submit to you that the reason no one was able to is because

1 our efforts cured the contempt.

2 THE COURT: What did you do, other than he, himself,  
3 begrudgingly, negligent, reluctantly, however you want to call  
4 it? What did you do other than had him, eventually, remove it?

5 MR. CAVALIER: Well, in order to get him to even try  
6 to do that, we had to come to court twice.

7 THE COURT: You could have talked to him.

8 MR. CAVALIER: We tried.

9 THE COURT: You could have talked to him.

10 MR. CAVALIER: We tried to do that, Your Honor.

11 THE COURT: As difficult as he might be, you could  
12 have talked to him.

13 MR. CAVALIER: Your Honor, we tried. And his  
14 response was, well, I didn't file it. I didn't file the  
15 confidential part of the Expert Report -

16 THE COURT: Well, I agree -

17 MR. CAVALIER: - which we proved -

18 THE COURT: - with you that -

19 MR. CAVALIER: - was -

20 THE COURT: - he's sloppy -

21 MR. CAVALIER: - incorrect.

22 THE COURT: - and he was sloppy, and all of that.  
23 But, coming to court when you really could not point to any  
24 actual damages, as a result of disclosure. And it was less  
25 than eight hours. It was less -

1 MR. CAVALIER: It was -

2 THE COURT: Is it -

3 MR. CAVALIER: - a month.

4 THE COURT: It -

5 MR. CAVALIER: It was a month -

6 THE COURT: No, that was -

7 MR. CAVALIER: - but it was -

8 THE COURT: - for the two. It was less than eight  
9 hours, because, if I understand it correctly from the  
10 pleadings, you gave a copy.

11 The copy that he included that was in violation of  
12 the Protective Order was released at 12:57 a.m. on October 1st,  
13 as part of his Motion to Strike, and included the Report as an  
14 exhibit.

15 At 3:30, he instructed his Assistant to remove it.  
16 It was removed at 9:00 a.m. The bulk of it was Report. That  
17 Report, only two third-party websites did not remove it until  
18 later on, on November 5th.

19 So, either eight hours, most of it was removed.  
20 Eventually the two websites that had it removed it on  
21 November 5th. But there was no harm to you, right?

22 MR. CAVALIER: Again, Your Honor, I don't know that  
23 we know that for sure. But the harm again is that we had to  
24 expend -

25 THE COURT: That was -

1 MR. CAVALIER: - Attorney -

2 THE COURT: - the problem with this case. You  
3 cannot prove harm at any point in time. You have not been able  
4 to prove harm.

5 And you've gone after the Plaintiff [sic] for a  
6 technical violation, because the trial testimony was that she  
7 released it to a friend. She did not use it.

8 You couldn't prove that she used it for any purpose,  
9 nor could you prove that her friend used it. And you know that  
10 the jury knew that, because you could not prove damages. And  
11 then, you came up with this theory of restitution to the tune  
12 of a half a million dollars.

13 MR. CAVALIER: So, again, Your Honor, I wasn't  
14 Trial Counsel. But I'll grant you what you just said. I will  
15 submit, though, that, according to the Federal Rules of Civil  
16 Procedure, there's no requirement to demonstrate actual harm.

17 THE COURT: So if I find that this was neglectful,  
18 it was not intentional, game -

19 MR. CAVALIER: Yes.

20 THE COURT: - over, right?

21 MR. CAVALIER: Yes.

22 THE COURT: All right.

23 MR. CAVALIER: But fees are mandatory, according to  
24 the Rules.

25 THE COURT: Unless it's intentional -- it's if this

1 is intentional. If it's unintentional, it's not mandatory.

2 MR. CAVALIER: No, I don't believe there's an  
3 intentionality requirement, Your Honor. You actually invited  
4 Mr. Carson to brief that precise issue back in November of last  
5 year. And instead of briefing that issue, he submitted a brief  
6 effectively calling my Co-Counsel liars.

7 THE COURT: Very well.

8 MR. CAVALIER: But, according to Rule 37 of the  
9 Federal Rules of Civil Procedure, if there's a violation of a  
10 Protective Order, an award of reasonable fees is mandatory.

11 THE COURT: Right; let me ask another question.  
12 Hasn't he shown substantial compliant [sic] with the Protective  
13 Order by trying to retrieve it? Retrieved the first bulk  
14 within eight hours, and then eventually retrieving the other  
15 two by November 5th. If he's in substantial complying [sic],  
16 why should I sanction him to the tune of \$65,000?

17 MR. CAVALIER: So -

18 THE COURT: And at one point, you were asking me for  
19 the verdict, basically.

20 MR. CAVALIER: - again, I didn't ask you for that.  
21 But I will -

22 THE COURT: Yeah.

23 MR. CAVALIER: - grant you that, at some point -

24 THE COURT: Which shows -

25 MR. CAVALIER: - in the case, someone may have.

1 THE COURT: - how ridiculous this is, okay? So,  
2 tell me why. So -

3 MR. CAVALIER: Again, Your Honor, I would submit  
4 that the reason -- if he is in substantial compliance, or if he  
5 substantially complied over the month of November 2021, the  
6 reason he substantially complied was because we forced him to  
7 do so by coming to court, getting Orders from you that directed  
8 him to go out to these third-party websites and take the stuff  
9 down. Were it not for the efforts that we made, compliance  
10 never would have been obtained.

11 THE COURT: Do you agree that the Report was live on  
12 PACER less than eight hours?

13 MR. CAVALIER: I believe that's correct.

14 THE COURT: All right. He removed that, not you.  
15 You had not filed a lawsuit until that time.

16 MR. CAVALIER: Well, he removed it and then claimed  
17 he never filed it. But -- yes, it -

18 THE COURT: Well, it doesn't -

19 MR. CAVALIER: - was removed.

20 THE COURT: - matter what he claims. It was removed  
21 within the first eight hours, live on ECF, right?

22 MR. CAVALIER: I believe so.

23 THE COURT: All right. So isn't that substantial  
24 compliance?

25 MR. CAVALIER: Again, Your Honor, I don't think it

1 is. And I think you touched on this.

2 THE COURT: Why not?

3 MR. CAVALIER: Because the Protective Order is there  
4 for a reason; he admitted during his testimony that he knew  
5 about it. He admitted that the Report was marked confidential.  
6 He admitted that -

7 THE COURT: But even if he makes a mistake, it's not  
8 commensurable with what you're requesting.

9 MR. CAVALIER: I would then ask Your Honor, why  
10 should my Client have to pay for yet another -

11 THE COURT: Because -

12 MR. CAVALIER: - mistake -

13 THE COURT: - your Client -

14 MR. CAVALIER: - in failing to file a -

15 THE COURT: - was -

16 MR. CAVALIER: - Court Order?

17 THE COURT: - after this Plaintiff [sic] because of  
18 the other lawsuit and the harassment. You had a motivation to  
19 pursue this.

20 And it's like going, killing a mosquito with a  
21 bazooka. I kept all that out, out of the trial, if you  
22 remember.

23 I don't know. You didn't -- you were not  
24 Trial Counsel. But it's clear to me that that's what's going  
25 on here.

1 MR. CAVALIER: Respectfully, as I can, I would -

2 THE COURT: All right.

3 MR. CAVALIER: - disagree, Your Honor. These are -

4 THE COURT: All right.

5 MR. CAVALIER: - actually fees that we didn't Jim  
6 these up. These fees were incurred and actually paid by my  
7 Client, which, by the way, is a 501(c)(3) nonprofit.

8 THE COURT: So what?

9 MR. CAVALIER: So I'm noting for the record that  
10 they don't -- I would -

11 THE COURT: Don't get -

12 MR. CAVALIER: - resist your effort -

13 THE COURT: Yeah.

14 MR. CAVALIER: - to consider this -

15 THE COURT: They're not entitled to -

16 MR. CAVALIER: - flagrantly -

17 THE COURT: - attorney fees -

18 MR. CAVALIER: - unreasonable fees.

19 THE COURT: - just because they are nonprofit doing  
20 God's will.

21 MR. CAVALIER: No, I agree.

22 THE COURT: Right.

23 MR. CAVALIER: I agree.

24 THE COURT: Right, okay. Let me ask. So, at one  
25 point in time, I thought that this Motion is an attempt to



1 disturb the jury's Finding and the Enter of Default against  
2 Ms. Barbounis, basically, is what you're asking. You're not  
3 pursuing that, right?

4 MR. CAVALIER: No, absolutely.

5 THE COURT: That argument, all right.

6 MR. CAVALIER: We're pursuing our right, under  
7 Rule 37, to have a reasonable attorneys' fee compensated to us  
8 for our efforts, but for the violation of your Order.

9 THE COURT: Okay.

10 (Asides)

11 THE COURT: The only person who has filed multiple  
12 proceedings is you, right?

13 MR. CAVALIER: Filed multiple proceedings?

14 THE COURT: You filed multiple Contempt Actions in  
15 this case.

16 MR. CAVALIER: I believe we filed one Contempt  
17 Action that resulted in a hearing. And we were required to  
18 come back to you on the same Contempt Action to remedy the  
19 continuing violation that was ongoing throughout the month of  
20 November.

21 THE COURT: All right. All right. Anything else I  
22 need to hear from you, anything else?

23 MR. CAVALIER: No, Your Honor. Again, I'd just  
24 submit that, under Rule 37, it's up to the Court as to what's a  
25 reasonable fee to remedy the contempt. We would agree with

1 that, whatever Your Honor would determine is reasonable under  
2 the circumstances.

3 But I would respectfully submit one last time that,  
4 under Rule 37, when there's a violation of a Protective Order  
5 -- and there's no dispute that there was a violation here -- a  
6 reasonable fee is mandatory for the Party who brings the  
7 Motion.

8 THE COURT: Oh, but the problem I have here is that  
9 the material was not on the website for a long time. Assume  
10 for a minute that I agree with you. He violated it -- the  
11 Protective Order, because it was a release.

12 But it's not intentional and it was sloppy, in an  
13 effort to try to respond to your many pleadings at the  
14 11th hour of the day he files something and mistakenly releases  
15 it.

16 Within eight hours, it was removed. It was not live  
17 on PACER. And by the month of November 5th, 2021, the two  
18 third-party websites that had not updated their Dockets  
19 reporting immediately removed it. So, if it's not intentional,  
20 I do consider and factor that in, in determining to what  
21 extent, if any -

22 MR. CAVALIER: I -

23 THE COURT: - do I give you anything -

24 MR. CAVALIER: - don't think -

25 THE COURT: - right?

1 MR. CAVALIER: - that intentionality is a factor as  
2 to whether we are due a reasonable fee. But if Your Honor  
3 believes that intentionality is part of the reasonable-fee  
4 analysis -

5 THE COURT: Right.

6 MR. CAVALIER: - I would grant you that that's  
7 possible.

8 THE COURT: Right; so, tell me where in the Rule  
9 does it said that it's mandatory?

10 MR. CAVALIER: So that's Rule -

11 THE COURT: That sanctions are mandatory.

12 MR. CAVALIER: - 37, Your Honor.

13 THE COURT: Yeah, where, in Rule 37, does it say  
14 that sanctions are mandatory?

15 MR. CAVALIER: I believe it's -

16 THE COURT: Where?

17 MR. CAVALIER: - in the commentary under the Rule.

18 THE COURT: Okay.

19 MR. CAVALIER: I don't have my Federal -

20 THE COURT: It -

21 MR. CAVALIER: - Procedure Rulebook. But it was  
22 briefed and cited, if you want me to give you -

23 THE COURT: All right.

24 MR. CAVALIER: - the previous -

25 THE COURT: But -

1 MR. CAVALIER: - filing.

2 THE COURT: - I'm asking you, because it was briefed  
3 and cited, but it's just cited. Tell me exactly where does it  
4 say that it is mandatory that this is automatic, whether it is  
5 neglectful or sloppy work that is mandatory, because -

6 MR. CAVALIER: So, Your Honor, in -

7 THE COURT: Let me look at the Rule.

8 MR. CAVALIER: - our previous briefing, as my  
9 Co-Counsel has just pointed out to me, we laid out that the  
10 Court both need not find intentional conduct to impose  
11 sanctions -

12 THE COURT: Right.

13 MR. CAVALIER: - under Rule 37, and also that the  
14 Court need not find actual harm. Beyond that, again, according  
15 to Rule 37 -

16 THE COURT: Doesn't say mandatory -

17 MR. CAVALIER: Well -

18 THE COURT: - does it?

19 MR. CAVALIER: - what I have in this Brief,  
20 Your Honor, I will read it to Your Honor, if you'll grant me  
21 the permission.

22 THE COURT: You seem not to be able to answer my  
23 question -

24 MR. CAVALIER: Well -

25 THE COURT: - as to -

1 MR. CAVALIER: - I'm -

2 THE COURT: - whether it's mandatory. And point me  
3 to where does it said shall order -

4 MR. CAVALIER: - quoting -

5 THE COURT: - sanctions?

6 MR. CAVALIER: - from Rule 37(b)(2)(C).

7 THE COURT: All right.

8 MR. CAVALIER: "The Court must order the disobedient  
9 Party, the Attorney advising that Party, or both to pay the  
10 reasonable expenses, including the attorneys' fees, caused by  
11 the failure to abide the Order, unless the failure was  
12 substantially justified or other circumstances make an award of  
13 expenses unjust." That's a direct quote from Rule 37(b)(2)(C).

14 THE COURT: So the fact that it was only there for  
15 eight hours, fact that it was on there at most a month, I  
16 consider that in determining whether I order -- must order a  
17 sanctions and the extent of the sanctions, if any.

18 MR. CAVALIER: I think -

19 THE COURT: Agree?

20 MR. CAVALIER: Well, I would agree that Your Honor  
21 can consider other circumstances that would make an award of  
22 expenses unjust.

23 THE COURT: Right.

24 MR. CAVALIER: I think that's the standard.

25 THE COURT: Okay. Such as the fact that -- whether

1 he did it intentional or not -- although I don't think he did  
2 it intentionally, more like sloppy, at 11th hour, 3:00 in the  
3 morning, or whatnot.

4           It was removed even before you filed your Motion,  
5 within eight hours, because, if I remember the facts, it was  
6 12:57 a.m. when the Report was attached to the Motion. And  
7 then, it was taken by 9:00 a.m. And at 3:30, there was a  
8 request to remove it. And it was removed at 3:00. So that's  
9 less than eight hours.

10           And then, eventually, the only two websites that  
11 updated their Docket reporting -- that they failed to update  
12 their Docket immediately, but eventually removed it by  
13 November 5th. And you cannot prove any damages as a result.

14           Those are all factors that I consider in deciding  
15 whether they must pay or not pay. You agree, right?

16           MR. CAVALIER: I would agree, with just a small  
17 clarification. And I mean that with all due respect,  
18 Your Honor.

19           I do think that you can consider those factors in  
20 determining what the reasonable fee is. I think you could also  
21 consider other factors that would make the entire award  
22 "unjust".

23           And I think when the Rule talks about the  
24 circumstances that would make an award of expenses unjust, it's  
25 really referring to ability of the other Party to pay, not the

1 circumstances giving rise to the contempt or the violation of  
2 the Order. But I do agree with you.

3 THE COURT: If somebody is negligent, makes a  
4 mistake -- inadvertent mistake, and releases the Report  
5 inadvertently, and makes effort to correct it before anything  
6 is done, like here, within eight hours. And then, at least  
7 steps to remove it, which it was a little more difficult  
8 afterwards, right?

9 Certainly, that is a significant unfairness if I was  
10 to impose a substantial amount of almost recovering all your  
11 attorney fees, when I believe this could have been resolved  
12 really easily by talking to each other.

13 MR. CAVALIER: Your Honor, I would suggest and  
14 submit, based on the prior record in the case, that we tried to  
15 talk about it. We tried.

16 Mr. Barnes tried repeatedly via email, via phone  
17 calls, to induce compliance with the Order. And ultimately, we  
18 were required to come back -

19 THE COURT: The -

20 MR. CAVALIER: - to court.

21 THE COURT: - relationship here between the Lawyers  
22 and the Clients is very contentious. And that's what happens  
23 when you have contentions Clients and contentions [phonetic]  
24 Lawyers in any one. Anything else you want me to consider?

25 MR. CAVALIER: No, Your Honor, I will say, my

1 relationship with Mr. Carson is not contentious at all. I like  
2 Mr. Carson. Personally, we get along very well.

3 THE COURT: You were not litigating this case. You  
4 did not file the Motion for Contempt, right?

5 MR. CAVALIER: That's fair.

6 THE COURT: Okay. You're just arguing. You had  
7 nothing to do with the contentions. I had to deal with both  
8 sides. So I got the brunt of both sides.

9 And this is what happened when Lawyers don't get  
10 along and work well together. But be that as it may, I think I  
11 understand your position. I'll take a close look at the Rule.  
12 Let me hear from Mr. Carson.

13 MR. CAVALIER: Thank you, Your Honor.

14 THE COURT: Or Carson's Attorney.

15 MS. SMITH: Yes, thank you, Your Honor.

16 THE COURT: So, again, I'm not happy with you,  
17 either. So, Carson was aware that the Report was covered by  
18 the June 12th, 2020 Protective Order.

19 MS. SMITH: Yes, Your Honor.

20 THE COURT: And he kept on arguing that it's not  
21 protected material. It's not protected material. But he  
22 agreed that it was protected and it was the eyes only.

23 And he attached it anyway -- attached the Report,  
24 which resulted in the disclosure, however de minimis it may be.  
25 It was out in the ECF PACER for approximately eight hours. And



1 it was out almost the month in those two websites.

2 So, tell me. And I think when asked for an  
3 explanation, he was all over the place saying that only  
4 25 pages were part of the Report, that the Report was not  
5 entirely disclosed, and turned out to be wrong. So, anyway,  
6 why I shouldn't impose sanctions?

7 MS. SMITH: Your Honor, I think because your very  
8 questions for Defense Counsel -- or Plaintiff's Counsel, which  
9 they were not able to answer, are those reasons. It would make  
10 it unjust. The first is that Mr. Carson -

11 THE COURT: But you agree, then, that it's  
12 mandatory, if -

13 MS. SMITH: I -

14 THE COURT: - I find a violation? It's mandatory?

15 MS. SMITH: - don't believe -

16 THE COURT: He's argued to me that it's mandatory.  
17 That mean it must. I must impose it if I find however  
18 technical the violation may be.

19 I could rectify it by saying, well, I could just give  
20 them a dollar to recognize that there was a violation, because  
21 it's my discretion. But you'd agree with that?

22 MS. SMITH: No, I don't agree -

23 THE COURT: Why not?

24 MS. SMITH: - with that, because unless there's  
25 reasons that make it unjust. So I think Your Honor's approach

1 to it, you could rectify it by giving a dollar, is one  
2 approach.

3 But the other reasons, or other circumstances, which  
4 would render a sanctions imposition on Mr. Carson as unjust,  
5 the things like that it was not intentional, that he rectified  
6 it as soon as possible with the Clerk once they opened.

7 That he took steps in his Declaration; he took  
8 affirmative steps that almost no other Counsel probably would  
9 have taken, and went to extreme efforts to rectify the issues.  
10 That there was no harm; that Counsel can't stand before you and  
11 tell you any actual articulable harm that has come to them or  
12 their Client.

13 Mr. Carson should not be sanctioned simply because  
14 Defense -- or Plaintiff's Counsel advised their Client to  
15 pursue killing a mosquito with a bazooka, because of their  
16 animosity towards the Plaintiff [sic] and Mr. Carson in this  
17 case.

18 The Rules do not -- that's not what the Rules of  
19 Sanctions are for. They are for intentional bad-faith acts,  
20 duplicative proceedings.

21 If anything -- and we are not seeking them against  
22 Plaintiff's Counsel -- if anything, Plaintiff's Counsel should  
23 be sanctioned for bringing us in here a number of times. Not  
24 only did they bring us in here a number of times for something  
25 that could have been rectified by a conversation, and, in fact,

1 was, when they -

2 THE COURT: But they claim that Mr. Carson was  
3 difficult. This was not an easy case on both sides. And both  
4 sides were difficult.

5 MS. SMITH: I agree.

6 THE COURT: So he was not. All they had to do is  
7 pick up the phone and talk to each other.

8 MS. SMITH: And Mr. -

9 THE COURT: I had many discovery dispute with this  
10 [sic] Parties, of which I would have sanctioned them both.

11 MS. SMITH: And Mr. Cavalier and I both come here  
12 without perfect Clients. I'm sure we'd both can probably admit  
13 to that and Your Honor's made that clear.

14 But Mr. Carson's conduct was not intentional. It was  
15 not in bad faith. It was not vexious [phonetic]. It was not  
16 in any capacity that would warrant sanctions.

17 He rectified it as soon as he could. He called a  
18 number of Third-Party Providers. He took a number of hours of  
19 his own time to rectify an issue that resulted in no harm to  
20 the Plaintiffs -

21 THE COURT: Tell me -

22 MS. SMITH: - in this case.

23 THE COURT: - how many hours did he spend? And what  
24 did he do? And how many hours did he spend that could offset  
25 their \$65,000 -

1 MS. SMITH: Your Honor -

2 THE COURT: - of -

3 MS. SMITH: - he provided a -

4 THE COURT: Because I could impose -- go ahead.

5 MS. SMITH: It's Docket 159. Mr. Carson filed a  
6 Declaration. It is 31 paragraphs of attempts. Phone calls  
7 that he made, Third-Party Docket individuals who he spoke with  
8 to ensure.

9 Checking, doublechecking, logging on, signing up for  
10 accounts that he undertook active steps, he undertook to ensure  
11 that not only was it off the public ECF Docket, but that these  
12 Third-Party Providers, it was no longer on there.

13 And I understand that not necessarily of entire  
14 moment, but the information that Mr. Carson submitted was  
15 testified by to Mr. Roman as not being trade secrets. The only  
16 thing in the Report that was filed by Mr. Carson that could  
17 have -- or in the original Report, not the filed Report.

18 The original Report that Mr. Roman testified to that  
19 was a trade secret were the individuals' emails. Those emails  
20 were not submitted in the Report.

21 Mr. Roman, himself, said that the information that  
22 Mr. Carson filed was public knowledge. The amount the person  
23 giving -- the organization giving the donation, the amount of  
24 the donations, all of those things were public knowledge.

25 Now, Mr. Carson should have probably taken a

1 different step and just not filed the Report, or filed it under  
2 seal, because it was in contention. Is that the easier way to  
3 do things? Yes.

4 Did he not do it the easier way? Maybe because it  
5 was 12:00 a.m. and overworked, yes. And Mr. Carson apologizes  
6 for that.

7 But it did not come to any harm -- result in any harm  
8 to the Plaintiff in this case. That information was public  
9 knowledge.

10 The emails, which Mr. Roman alleges are trade  
11 secrets, but the jury has decided differently, those things  
12 were not included in that Report. So there was no harm that  
13 Mr. Carson caused the Plaintiffs.

14 And in fact, despite the fact that there was no harm,  
15 he still undertook 31 paragraphs of Declaration of active steps  
16 to ensure that no additional potential harm, alleged harm. He  
17 took all those efforts, despite that.

18 And Mr. Cavalier -- or not Mr. Cavalier, because he  
19 was not the individual who could have picked up the phone. But  
20 they never picked up the phone and asked him to do these  
21 things.

22 When they did, he did undertake those things, and  
23 undertook them before even being asked to do some of those  
24 things. So, Mr. Carson took steps to mitigate the harm that  
25 allegedly potentially could have come to the Plaintiffs in this

1 case. Additionally -

2 THE COURT: It -

3 MS. SMITH: - when those phones were picked up,  
4 Your Honor, there were settlement discussions. And settlement  
5 discussions, pursuant to Equal Employment Opportunity  
6 Commission v. Dart Container Corp., settlement discussions  
7 undercut the request for sanctions.

8 They don't want sanctions in this case because  
9 sanctions are warranted. They want sanctions in this case  
10 because they're trying to kill a mosquito with a bazooka,  
11 because they had animosity towards the Plaintiff [sic] and they  
12 have animosity towards Mr. Carson.

13 THE COURT: So, let me ask. If I was to ask  
14 Mr. Carson to tell me how many hours, at what rate did he spend  
15 at mitigating, what is that amount amounts to?

16 MS. SMITH: May I offer him up for that, so he can  
17 give you an exact number, Your Honor?

18 THE COURT: Yeah, did he do that?

19 MS. SMITH: He can -

20 THE COURT: Because it's hard to get numbers from  
21 him, as you well know.

22 MS. SMITH: - give you an estimate. And if that's  
23 something Your Honor would like particulars on, we can recreate  
24 that for Your Honor.

25 THE COURT: All right. Well, tell me. Talk to him

1 and tell me how many hours. In other words, I want to know the  
2 exact amount of hours and time that it took him to mitigate,  
3 and the cost to him, if he was to be charging his fees.

4 MS. SMITH: May I have the -

5 THE COURT: I want to know that.

6 MS. SMITH: - Court's indulgence?

7 THE COURT: Yeah, you may talk to him.

8 MS. SMITH: Thank you, Your Honor.

9 (Asides)

10 MS. SMITH: Your Honor, Mr. Carson estimates that he  
11 spent 50 hours, conservatively. Obviously we could do a  
12 recreation of the hours through emails.

13 It's not billed to our Client. We did not seek it on  
14 the Fee Petition. We don't plan to. Those are things that our  
15 firm, Mr. Carson has agreed to undertake on his own doing.

16 THE COURT: All right. Fine, but, in other words,  
17 the Petition caused him to spend time and money mitigating it?

18 MS. SMITH: Yes, he -

19 THE COURT: All right. Okay.

20 MS. SMITH: Yes.

21 THE COURT: Anything else?

22 MS. SMITH: I don't believe so, Your Honor.

23 THE COURT: All right. Counsel, any rebuttal? Oh,  
24 I have one more question.

25 MS. SMITH: Yes.

1 THE COURT: Something that bugged me, because why  
2 did he use UTC time zone in the Motion to Strike? The UTC, he  
3 used.

4 When he sent the thing, he used the UTC time zone.  
5 He knows what I'm talking about. Why did you use that time  
6 zone?

7 MR. CARSON: It was just that my computer was set to  
8 the wrong time, and it was telling my email address to report  
9 the wrong time. And I fixed it. It just was a stupid mistake.  
10 That's all it was.

11 THE COURT: All right, thank you.

12 MS. SMITH: Thank you, Your Honor.

13 THE COURT: Any rebuttal?

14 MR. CAVALIER: Just a very brief rebuttal,  
15 Your Honor. I just wanted to note, for the record, since much  
16 of our discussion today has been about actual harm, that,  
17 according to Third Circuit precedent, a "actual harm" is not an  
18 element for proving civil contempt.

19 And that is -- there's several cites. But I'll give  
20 you John T., which is 318 F.3d 545 at 552, Third Circuit  
21 (2003). Just standing for the proposition that the violation  
22 of the Order and the -

23 THE COURT: I know, but -

24 MR. CAVALIER: - expense that it generates -

25 THE COURT: - as to whether -



1 MR. CAVALIER: - causes the harm.

2 THE COURT: - it's fair or not, the imposition of  
3 the sanction, I could factor that in, in deciding, well --  
4 yeah, but there was no harm. Don't tell me that I cannot  
5 consider that in deciding whether or not -

6 MR. CAVALIER: No, it's -

7 THE COURT: -- if and to what extent I impose  
8 sanctions.

9 MR. CAVALIER: Your Honor, I will grant you that you  
10 have very broad discretion -

11 THE COURT: Right.

12 MR. CAVALIER: - to determine the amount of a  
13 reasonable sanction, under these circumstances, when your  
14 Order's been violated. I agree with you, wholeheartedly.

15 THE COURT: Right.

16 MR. CAVALIER: The second thing I just wanted to  
17 note, in rebuttal to my -

18 THE COURT: But, Mr. Barnes, what was the law firm?  
19 Refresh my recollection, the \$65,000. How do you come up?  
20 What was the share of the calculation? How do you come up with  
21 that amount?

22 MR. CAVALIER: So, first off -

23 THE COURT: You filed two Motions and you had a  
24 briefing on the two Motions. But what was the total amount of  
25 hours and total amount of rate? Refresh my recollection from

1 the filed pleadings.

2 MR. CAVALIER: Sure, Your Honor. First, let me just  
3 point out that it was actually more than that. Mr. Gold worked  
4 on these matters, too. We didn't seek -

5 THE COURT: You could put 20 Lawyers to do what one  
6 Lawyer could do and it's not going to change the -- it's just  
7 going to -

8 MR. CAVALIER: Right.

9 THE COURT: - add to -

10 MR. CAVALIER: You were -

11 THE COURT: - cost.

12 MR. CAVALIER: You asked me how we calculated  
13 their -

14 THE COURT: Yes.

15 MR. CAVALIER: - fee.

16 THE COURT: Tell me.

17 MR. CAVALIER: I wanted to let you know that we  
18 calculated the fee, first off, by waiving Mr. Gold's time.

19 THE COURT: Okay.

20 MR. CAVALIER: And then, discounting Mr. Barnes'  
21 time. And I have here -- I could give you the exact breakdown.

22 THE COURT: Why will you need a whole bunch of  
23 Lawyers to file a Petition for Attorney Fees and brief it?  
24 That -

25 MR. CAVALIER: Yeah, Your Honor, it was -

1 THE COURT: And why does it have to be the Partners  
2 who are trying the case, and not an Associate?

3 MR. CAVALIER: I think that the record that was  
4 created before you demonstrates why it was necessary. I mean,  
5 these are complicated issues. Your Honor was present for -

6 THE COURT: There was nothing -

7 MR. CAVALIER: - the runup -

8 THE COURT: - complicated -

9 MR. CAVALIER: - to the trial.

10 THE COURT: - about this case. You got a verdict.  
11 It's on appeal.

12 MR. CAVALIER: But I'm not talking about the case.  
13 I'm talking about the sanctions issue. This was a hard-fought  
14 battle trying to gain compliance with Your Honor's Protective  
15 Order, which, by the way, Your Honor, I heard a lot of talk  
16 about trade secrets and the jury's finding.

17 The trade secret issue has nothing to do with the  
18 Protective Order. The Protective Order governs confidential  
19 information. And if another Party believes that that  
20 information's been designated confidential in error, there's a  
21 procedure laid out as to how to deal with it -

22 THE COURT: Okay.

23 MR. CAVALIER: - so we can make sure this kind of  
24 thing doesn't happen.

25 ESR: One second -

1 THE COURT: Okay.

2 ESR: - please.

3 (Asides)

4 MR. CAVALIER: And Your Honor -

5 THE COURT: We've been having -

6 MR. CAVALIER: - sorry.

7 THE COURT: We've been having issues with our  
8 electronics. Can I go back?

9 ESR: You got it. It's caught everything -

10 THE COURT: Okay.

11 ESR: - on the recording.

12 THE COURT: Could you refresh my recollection,  
13 because I remember being in discovery dispute with these  
14 Parties too many times from the beginning? Do you remember how  
15 many?

16 MR. CAVALIER: How many discovery -

17 THE COURT: Did you review -

18 MR. CAVALIER: - disputes were -

19 THE COURT: - the Docket?

20 MR. CAVALIER: - had?

21 THE COURT: Yeah, how many discovery disputes we  
22 had.

23 MR. CAVALIER: Well, again, Your Honor, I wasn't  
24 Primary Counsel during that time. But I -

25 THE COURT: You review the Docket, right?

1 MR. CAVALIER: - do, but Mr. Carson and I also had  
2 numerous other cases where discovery issues were in play. So  
3 it's hard for me to separate the ones that occurred in this  
4 case out from the -

5 THE COURT: All right.

6 MR. CAVALIER: - grayer mess.

7 THE COURT: All right.

8 MR. CAVALIER: But I think there was another  
9 discovery dispute, yes, concerning Plaintiff's nonproduction of  
10 documents, I want to say, sometime in early 2021.

11 THE COURT: All right.

12 MR. CAVALIER: I believe -

13 THE COURT: Anything -

14 MR. CAVALIER: - that's correct.

15 THE COURT: - else? Anything else that you want to  
16 place before the Court before I rule on your request for  
17 sanctions?

18 MR. CAVALIER: Just to answer your question, you  
19 asked about the hours' breakdown and the -

20 THE COURT: Right.

21 MR. CAVALIER: - rates. So this is in our original  
22 filing. But it's Mr. Barnes, 37.8 hours, at the rate of \$895  
23 an hour, which is a -

24 THE COURT: At what?

25 MR. CAVALIER: - 15 -- pardon?

1 THE COURT: Eight hundred and what?

2 MR. CAVALIER: Eight ninety-five is his rate.

3 That's a 15-percent discount off his standard, customary rate.  
4 Rebecca -

5 THE COURT: I'm in the wrong job.

6 MR. CAVALIER: - Rebecca Sita is 12.6 hours at 815.  
7 Ashley Bouche is 18.9 hours at 550. And Shane Roberts is  
8 20.7 hours at 495. And I guess, Your Honor, the last thing I  
9 would want to say -

10 THE COURT: Well -- yeah, let me -

11 MR. CAVALIER: - that's -

12 THE COURT: - ask then. I have you here.

13 MR. CAVALIER: Sure.

14 THE COURT: Mr. Carson said about 50 hours. What is  
15 your rate, Mr. Carson? I know you didn't charge your Client.  
16 But you said 50 hours at what rate?

17 MR. CARSON: When I filed a Fee Petition,  
18 Your Honor, I'd asked for \$500 an hour.

19 THE COURT: Excuse me, say what was your rate?

20 MR. CARSON: Sorry, when I filed my Fee Petition  
21 with the Court, we asked for \$500 an hour for my time.

22 THE COURT: All right.

23 MR. CARSON: And that's -- they're billing \$495 an  
24 hour for non-Attorneys. The last person he mentioned wasn't  
25 even an Attorney.

1 THE COURT: Right; so have I acted on your Attorney  
2 Fee Petitions?

3 MR. CARSON: You have, Your Honor.

4 THE COURT: Okay. I have that under advisement.  
5 Okay.

6 MR. CAVALIER: Your Honor, just lastly, since we're  
7 now talking about the reasonableness of the rate, I have a  
8 Bench Brief here that -

9 THE COURT: He's -

10 MR. CAVALIER: - I'd like to -

11 THE COURT: Go ahead.

12 MR. CAVALIER: - offer up.

13 THE COURT: Go ahead.

14 MR. CAVALIER: Simply establishing, under  
15 Third Circuit precedent, that when, unlike Mr. Carson's rate,  
16 which is theoretical, we will call it, these cases established  
17 that when a rate is actually charged, billed to, and paid by a  
18 Client, it's presumptively reasonable. These cases will save  
19 your Law Clerk some time if -

20 THE COURT: Okay.

21 MR. CAVALIER: - you'll accept the submission.

22 THE COURT: Very well.

23 (Asides)

24 THE COURT: Anything else that I need to consider?

25 MR. CAVALIER: Not from us.

1 THE COURT: Okay. Attorney -- I think -

2 MS. SMITH: Smith, but -- no -

3 THE COURT: Well, what?

4 MS. SMITH: - Your Honor, not from us, either.

5 THE COURT: Anything else from your side?

6 MS. SMITH: No, we thank you.

7 THE COURT: Okay, thank you.

8 MS. SMITH: Thank you, Your Honor.

9 THE COURT: I'll take it under advisement. I should  
10 issue an Order in short course. And this issue and this issue,  
11 only.

12 I still have the other issue of the Attorney  
13 Petition. And you have -

14 MR. CAVALIER: No, it's -

15 THE COURT: That's right, right? The request for  
16 attorney fees from -

17 MR. CAVALIER: That -

18 THE COURT: - your side?

19 MR. CAVALIER: - was denied.

20 THE COURT: Oh.

21 MR. CAVALIER: This is the only issue -

22 THE COURT: Oh, that's right.

23 MR. CAVALIER: - left in the case.

24 THE COURT: That's right. I dealt with that  
25 already.



1 MR. CAVALIER: You have.

2 THE COURT: And this is the only one that is  
3 pending, okay.

4 MR. CARSON: Yeah, I think, Your Honor, there was  
5 also a Motion for a New Trial that was outstanding in this  
6 case.

7 THE COURT: Right, but there's no pending Motion for  
8 a New Trial. I think I disposed of that, right?

9 MR. CARSON: Okay.

10 THE COURT: I denied it and -

11 MR. CAVALIER: Yes.

12 MR. CARSON: You denied it already.

13 THE COURT: - you've -

14 MR. CARSON: Sorry, Your Honor.

15 THE COURT: Has there been -

16 MR. CAVALIER: It's -

17 THE COURT: - an appeal in this case?

18 MR. BARNES: No.

19 MR. CAVALIER: No.

20 MR. BARNES: No appeal, Your Honor.

21 MR. CAVALIER: No appeal.

22 MR. BARNES: No appeal.

23 THE COURT: All right. So, thank you.

24 MR. CARSON: Thank you.

25 THE COURT: So the only thing I have pending in this

1 case is the Attorney Fee Petition, right?

2 MR. CAVALIER: Yes, correct, Your Honor.

3 THE COURT: Nothing else?

4 MR. CAVALIER: Correct.

5 MS. SMITH: The -

6 THE COURT: Your Petition was denied. Request for  
7 attorney fee, I think I explained to you why in a very thorough  
8 Opinion.

9 And you brought to my attention that this has not  
10 been disposed of and it was still pending. So that's why I  
11 scheduled argument. Is there anything else you want me to  
12 consider?

13 MR. CAVALIER: Not from the Plaintiff.

14 THE COURT: All right. Thank you very much.

15 MS. SMITH: Thank you, Your Honor.

16 THE DEPUTY CLERK: All, rise.

17 (Proceedings concluded at 2:46 p.m.)

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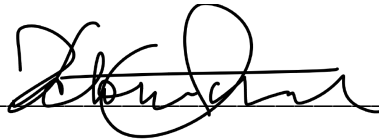
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## C E R T I F I C A T I O N

I, VICTORIA O'CONNOR, court-approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in black ink, appearing to read 'Victoria O'Connor', is written over a horizontal line.

Victoria O'Connor, CET

December 24, 2022

Date

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